

## OBSERVATIONS

### CARES Act – Loan Forgiveness Application

May 20, 2020

On Friday, May 15th, the Small Business Administration (SBA) released the Paycheck Protection Program (PPP) Loan Forgiveness Application. The Application can be found at <https://home.treasury.gov/system/files/136/3245-0407-SBA-Form-3508-PPP-Forgiveness-Application.pdf>

While the Application helps to clarify some of the definitions and documentation requirements, there are several issues which are still unanswered. Moreover, the Application itself raises certain other issues that need resolution. The Application is already receiving comments, feedback and requests for additional clarification. We anticipate there may be subsequent revisions to the forgiveness Application before they are actually accepted by lenders.

The Application generally works to:

- I. Quantify the potential total amount for payroll and forgivable costs that the business has spent over the eight-week allowable period
- II. Determine how much of the total amount is reduced for reductions in wages or full-time equivalent employees (FTEs) based on the guidance in the CARES Act
- III. Potentially further reduce the forgivable amount to confirm that payments are comprised of at least 75 percent payroll costs.

The Application includes:

1. Loan Forgiveness Calculation Form
2. PPP Schedule A
3. PPP Schedule A Worksheet
4. Optional PPP Demographic Information Form

Currently only items 1 and 2 are required to be submitted to the lender. Item 3 is required to be completed and maintained by Applicant; this worksheet contains detailed calculations including a schedule of individual employees' compensation. Item 4 is optional to submit to the lender.

Other documentation required to be submitted with the Loan Forgiveness Application includes, but may not be limited to:

1. Bank account statements or third-party payroll service provider reports documenting the amount of cash compensation paid to employees, tax forms (or equivalent third-party payroll service provider reports) and supporting documentation for employer contributions to health insurance and retirement plans
2. FTE documentation showing employee FTE levels at the elected measurement period (either February 15, 2019 to June 30, 2019 or January 1, 2020 and February 29, 2020)

The Application does include information on other items including;

- Additional guidance on definitions of incurred costs and paid costs
- An alternative payroll covered period to allow for payroll disbursements to better align with an employer's payroll cycle
- FTE calculation guidance including a simplified method for determining FTE amounts at the election of the borrower
- The ability to pay after the 8-week period certain non-payroll costs incurred during the 8-week period, subject to some limitations

However, additional guidance will be needed to further clarify specifics for these provisions.

The Application also requires certification and representations by the Authorized Representative.

We encourage businesses to review the Application and work towards addressing the various documentation and calculation requirements so that they can submit their forgiveness Application soon after the covered period has ended.

**MALONEY & KENNEDY, PLLC**